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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/772,866	02/06/2004	David A. Anderson	7493	5558

7590 04/08/2008

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EXAMINER	
SAYALA, CHHAYA D	
ART UNIT	PAPER NUMBER
1794	
MAIL DATE	DELIVERY MODE
04/08/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/772,866	ANDERSON ET AL.	
	Examiner	Art Unit	
	C. SAYALA	1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-9* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-9* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

1. Claims 1-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Miller et al. (US Patent 4032665) in view of Weyn (US Patent 4039687), Pitchon et al. (US Patent 4371556) and Spanier (US Patent 4904494) and further in view of Brown et al. (US Patent 4366175), Spanier et al. (US Patents 5532010 & 4822626), JP 59045836, Palmer (US Patent 3808340) and Karwowski et al. (US Patent 5731029).

. Miller et al. disclose a pet food product that contains wheat flour in an amount 31%, soybean meal ~20%, steamed bone meal about 3%, vitamin premix 1.5%, salt about 0.25% (see the examples). The patent does not teach the remaining ingredients for the dry pet food. Weyn claims a pet food product that incorporates dried brewer's yeast in an amount 5%, wheat germ in an amount 7.85% and steamed bone meal 1% (see claim 1) as well as wheat midds (col. 5). Pitchon teaches a low cost, nutritional approach to preparing dry dog food by using soy meal, soy oil and soy flour in dog foods. See example 1 that teaches wheat midds (about 20%), ground corn, 44%, soybean ground 22.7%, bone and meat meal 11%. Spanier ('494) is drawn to a canine biscuit which includes wheat meal, meat and bone meal, salt, soybean oil, soybean meal, cheese meal, see the cols. 5-8 and example 1 and the amounts therein. The

patents collectively teach that the ingredients claimed herein at claims 3 and 4 were already being widely used in the art for the preparation of pet foods, either dry food or biscuits.

Spanier et al. ('626) also teaches a biscuit composition and using a rotary mold to create depressions and recesses on top of the biscuit before coating it. The recesses are filled with the coating material. The patent does not teach a raised edge *per se*. But if recesses can be created, then a raised edge is within the ambit of the skilled worker and then coating it within the raised edge. Such a design can even be considered one of personal choice given the disclosure, which shows filling the recess. See col. 10, lines 32-41 and claim 23. Spanier et al. do not disclose the ratio of coating to core, but Brown et al. who teaches typically the same concept discloses the coating formulation to be about 2-20%. See claim 1.

Note that only some these amounts overlap, but in view of the fact that all these ingredients are known and that they have been used in prior art adds to the position that to optimize amounts in order to obtain the required texture, density or composition.

With regard to claim 7, Spanier et al. ('010) teach that their coated biscuit for dogs has a water activity of 0.70; however, the references do not show any of the characteristics recited in claim 7. Applicant has chosen to describe the product by using physical characteristics that as a practical matter, cannot be measured by this Office since the Patent Office is not equipped to manufacture products, then obtain prior art products and make physical comparisons therewith.

With regard to claim 8, Spanier et al. ('010) teach a coating formulation that contains a meat ingredient, preferably beef, (col. 11, lines 55+), sodium benzoate in the amount claimed (col. 10, lines 30-35), lecithin in amounts .1 to 1.5 wt% (col. 10, lines 40-50), from 0.05 to 1.5 wt% xanthan gum. The gum is known as a thickener and as a functional equivalent to agar. (See for instance JP 59045835). With regard to mechanical deboning the beef, to debone the beef in order to obtain a liquefied coating, would have been obvious and to use a mechanical means to achieve this, more expedient and therefore, obvious. Salt is shown at col. col. 11, lines 10-15 in the same amounts. Spanier et al. '626 also teaches xanthan gum 1-5%, meat 10-50%, and sugars 5-15%. See col. 7. The meat is described as being finely divided and is described as meat byproduct, which renders obvious the meat and bone meal. Note the coating in Brown et al. that teaches antioxidants. Col. 7, lines 5-15.

With regard to propylene glycol, the use of such humectants is known in coating compositions as evidenced by Palmer at col. 7. High fructose corn syrup is also a humectant and for this benefit, it would have been obvious to incorporate this in a coating formulation. See Karwowski et al. at col. 8, lines 21-50 that shows it to be a humectant.

Coating formulations of prior art as shown above use the same or similar components, each with its own function and to find requisite amounts would have been obvious based on their functional attributes. Furthermore, it is well established that new recipes for cooking food, which involves addition or elimination of common ingredients, or for treating them in ways which differ from former practice, do not amount to an

invention merely because it is not disclosed that no one else ever did what applicant did; applicant must establish coaction or cooperative relationship between ingredients which produces new, unexpected and useful function. See In re Levin, 84 USPQ 232 (CCPA 1949).

2. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Dahle (US Patent 4401681).

Example 1 teaches a cookie (biscuit) that is filled with a jam (liquid filling). At line 45 the patent teaches placing the filling in the depression of a cookie. Left to air dry, it would have been obvious that the jam gelled. Note that the cookie is not taught as having holes punched into it, but such an expedient would have been obvious that making indentations in the base of the cookie would aid in having the filling reach to the bottom of the cookie. Such adjustments are well within the skill of the routineer who is making cookies or biscuits filled with jams, jellies or toppings. Note too at example 3, the pizza preparation that could be deemed to be larger version of the cookie. This claim is not confined to a dog biscuit.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to C. Sayala whose telephone number is (571) 272-1405.

The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/C. SAYALA/
Primary Examiner, Art Unit 1794